



28th November, 2013.

Mr. Saif Ullah Chattha,
Federal Secretary,
Ministry of Water & Power,
Ministry of Water and Power,
A Block, room no 201-204 2nd Floor,
Pak Sectt.
Islamabad

Sub: Application of Rule of Law, and 'Zero tolerance for Corruption'

Dear Sir,

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This is to inform the Secretary and all organizations under control of the ministry that the Supreme Court of Pakistan on 22nd November 2013 has announced the landmark judgment in the Suo Moto case 18 of 2010, action regarding violation of Public Procurement Rules, 2004 in procurement of billions of rupees of exchequer case by National Insurance Co. Ltd, which should become a guideline for all public office holders to perform their duties as per law.

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The copy of the Judgment may be downloaded from website of the Supreme Court of Pakistan, <http://www.supremecourt.gov.pk/web/page.asp?id=1694>.

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The Judgment Order starts with the following paragraph;

The case at hand involves issues of corruption and white collar crime. The case was brought to our notice by Transparency International Pakistan (TIP). TIP highlighted violations of Public Procurement Rules, 2004 (PPRA Rules) in procurement of properties in its letter dated 06.05.2010. These violations have allegedly caused losses worth billions of rupees in the span of only six months after appointment of Ayyaz Khan Niazi as Chairman on 12.12.2009 of the National Insurance Company Ltd.

Besides other decisions ordered in the judgment, the Judgment has also established the application of the most important corrupt practice, ' **the misuse of authority to take gain or favor, or to give gain or benefit any other person** ', defined in the Section of NAB Ordinance, NAO 1999, Corruption and Corrupt Practices, Section 9 (a) (vi), for which the punishment if found guilty is upto 14 years rigorous imprisonment. The pertinent paragraph of the Judgment is quoted below:

59. The above discussion persuades us to hold as under: -

*(a) That appointment of Ayyaz Khan Niazi was contrary to section 12 of the Insurance Ordinance, 2000 and rules framed thereunder, as non-transparent, illegal and unwarranted. Thus, except one of the officers (Tariq Zubair Khan, Section Officer), all others i.e. Qamar Zaman Chaudhry, the then Additional Secretary; Suleman Ghani the then Secretary Commerce; Makhdoom Amin Fahim, the then Commerce Minister; Ismail Qureshi, the then Secretary Establishment; and Ms. Nargis Sethi, the then Acting Principal Secretary to Prime Minister are involved in his appointment **and, prima facie, are liable to be dealt with under section 9(a)(vi) of the National Accountability Ordinance, 1999 [as amended by National Accountability Bureau (Amendment) Ordinance, 2002] on account of NICL scam pertaining to Punjab (Lahore) and Sindh (Karachi) where allegedly offences of corruption and corrupt practices have been committed;***

The section 9 (a)(vi) and 10 (a) of the National Accountability Ordinance, 1999 [as amended by National Accountability Bureau (Amendment) Ordinance, 2002, are quoted below.



Corruption and corrupt practices

9 (a) A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices-

(vi) 2[if he misuses his authority so as to gain any benefit or favour for himself or any other person, or 3[renders or attempts to render] 4[or willfully fails to exercise his authority to prevent the grant, or rendition of any undue benefit or favour which he could have prevented by exercising his authority];

Punishment for corruption and corrupt practices:

10. (a) 5[A holder of public office, or any other person who commits the offence of corruption and corrupt practices shall be punishable with 6[rigorous] imprisonment for a term which may extend to 14 years 7]

This has to be noted that the Ministry and all organizations under its control shall have Zero tolerance for Corruption.

The officers of the ministry/organizations under the control of the ministry, and the Directors/Trustees of the respective Boards, are required to keep in view Section 9 of NAO 1999, the acts of corruption, and the Supreme Court Judgment dated 22-11-2013 in NICL case, before performing any official functions. In all matters, application of Rule of Law shall be followed in letter and spirit.

Especially in matters of Procurements and Public Private Participation Projects, Public Procurement Rules should be strictly adhered to. No contract appointments shall be given to officers after their retirement on regular posts. Supreme Court in Suo Moto Case No.16 of 2011 and on 22.03.2013 in Suo Moto Case No.24 of 2010 (PLD. 2011 SC 277), has held that re-employment of such persons in services on their retirement must be made in public interest because re-employment against sanctioned post is likely to affect the interest of junior officers, who are waiting for promotion to the next higher ranks and their rights of promotion are blocked. And they have to wait till such re-employed officer completes his contract. In the meanwhile, they have to face difficulties in maintaining their seniority etc. It is a settled principle of law that the promotion of an employee is not to be blocked to accommodate a retired officer. However, if the right of promotion is not blocked by re-employment, then such powers can be exercised, that too in an exceptional case. Appointments shall be made on merit only (refer to the parameters set by the SC Judgment of Pakistan in para 25 in the CP 30/2013 Khwaja Asif, dated 6.6.2013) , land allotments by public auction in a transparent manner.

In administrative matters, circumvention of rules to accommodate any party on political or any other interference/ pressure, and in violation of contractual obligations etc, according to Section 9 of National Accountability Ordinance 1999, comes under the ambit of Corruption and corrupt practices.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption.

Yours Sincerely,


Syed Adil Gilani
Adviser

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Federal Minister, Ministry of Water & Power ,Islamabad.
Chairman, Alternative Energy Development Board, Islamabad.
Chairman, WAPDA, Islamabad.
Managing Director, NESPAK, Islamabad.
Managing Director, Private Power and Infrastructure Board (PPIB), Islamabad.
Managing Director, National Power Construction Company (NPCC)
Managing Director, National Transmission & Despatch Company (NTDC), Islamabad.
Registrar, Supreme Court of Pakistan, Islamabad.